

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240006429

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Physical Profile Record, 19 May 1965
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 11 October 1965
- The Adjutant General (TAG) letter, 4 June 1969
- Secretary of the Army letter, 18 June 1969
- Secretary of the Army letter, 3 July 1969
- TAG letter, 20 August 1969
- Expulsion from the US Military Reservation
- VA Form 21-0966 (Intent to file a claim for compensation and/or pension, or survivors pension...)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states while on medical restrictions near Christmas of 1964 he and one of his sergeants butted heads. He was put in the stockade during Christmas and New Years for the bad word that he said/called him. He was to be doing hard labor during the lock up however due to medical restrictions he could not. He had been harassed prior to the lock up due to his knee conditions and being on restrictive duty. He believes that although at that time the punishment fit the situation. He also feels as if not having an honorable discharge due to this incident that he was punished for is unjust and wishes for it to be changed. Years ago, when he applied, he had small children and could not drop everything and go to DC. It is troubling to him to have the

discharge status of other than honorable and respectfully request the upgrade to honorable being on medical restriction when he returned to his unit after the lockup he was harassed and bullied daily from others in the unit back then they called it "ghosting" this still affects him today.

3. The applicant enlisted in the Regular Army on 27 August 1963.

4. He received non-judicial punishment (NJP) under article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 18 June 1964, on or about 17 June 1964, fail to obey a lawful order
- 22 June 1964, on or about 22 June 1964, fail to go at the time prescribed to his appointed place of duty
- 8 October 1964, on or about 1 October 1964, wrongfully appear at the orderly room without proper uniform; he was reduced to private/E-2

5. On 17 December 1964, a special court-martial convened and found him guilty of on or about 10 December 1964, was disrespectful in language toward a superior non-commissioned officer, by saying to him when you MFers give me time or words to that effect. He was sentenced to confinement at hard labor for forty-five (45) days, and to forfeit \$50.00 and to be reduced to private/E-1. The convening authority approved the sentence, and it was to be duly executed.

6. Special Court-Martial Order Number 2, issued by 82d Airborne Division Artillery, Fort Bragg, NC, on 5 January 1965, shows the unexecuted portion of the sentence to confinement at hard labor only, was mitigated to twenty-five (25) days hard labor without confinement.

7. He received NJP under article 15 of the UCMJ on 25 March 1965, for on or about 0555 hours, 24 March 1965, wrongfully fail to be at his appointed place of duty and remained so absent until on or about 2000 hours, 24 March 1965.

8. The applicant provides a Physical Profile Record dated 19 May 1965, which shows a permanent profile was issued for internal derangement of the left knee. This profile was re-issued of documented Medical Board Proceedings dated 11 December 1964.

9. The notification of separation is void of his record. However, on 6 August 1965, a statement shows he was counseled and advised of the basis for the action recommended under the provisions of Army Regulation (AR) 635-208 (Personnel Separations-Discharge-Unfitness and Unsuitability). He was afforded the opportunity of requesting counsel and he declined the opportunity. He understood:

- The type of discharge he may receive

- If an undesirable discharge is issued to him that such discharge will be under conditions other than honorable
- As a result of such discharge he may be deprived of many or all rights as a veteran under both Federal and State laws
- He may expect to encounter substantial prejudice in civilian life

10. On 10 August 1965, his immediate commander recommended he be discharged under the provisions of AR 635-208. The reason for the recommendation was he had repeatedly been guilty of infractions of regulations which had led to four article 15 actions and one special court-martial.

11. On 7 September 1965, his intermediate commander recommended approval and that he be discharged under other than honorable conditions.

12. On 13 September 1965, the action was returned for compliance with Division regulation 635-200, which states the unit commander will have platoon leader, platoon sergeant, squad leader and others who may have been directly involved with the individual complete DA Forms 19-24 to reflect:

- Relationship between officer/EM and individual
- Dates relationship began and terminated
- Character, attitude, efficiency and personal characteristics of the individual both on and off duty

13. On 15 September 1965, the action was forwarded after compliance.

14. He received NJP under article 15 of the UCMJ on 21 September 1965, for on or about 10 September 1965, was observed in the vicinity of the Division Headquarters in an unclean uniform.

15. On 27 September 1965, the separation authority approved discharge under the provisions of AR 635-208 and directed he be furnished an Undesirable Discharge Certificate.

16. On 6 October 1965, he received a separation physical examination which found internal derangement of the left knee and character and behavior disorderly. He was qualified for military service.

17. He was discharged under other than honorable conditions on 11 October 1965, under the provision of AR 635-208. His DD Form 214 shows (Separation Program Number) 28B (Unfitness). Also, he completed 2 years and 26 days net service this period.

18. On 10 June 1969, the Army Discharge Review Board (ADRB), after careful consideration of military records and all other available evidence, determined that he was properly discharged. His request for a change in the type and nature of discharge was denied.

19. The applicant provides:

- TAG letter, 4 June 1969, notifying him of his application status to the ADRB
- Secretary of the Army letter, 18 June 1969, notifying him that his case was scheduled for 17 July 1969
- Secretary of the Army letter, 3 July 1969, notifying him that he may have counsel represent his case to the ADRB by his own responsibility
- TAG letter, 20 August 1969, notifying him that his case was denied
- VA Form 21-0966 (Intent to file a claim for compensation and/or pension, or survivors pension...) showing he intended to file a claim for compensation

20. By regulation AR 635-208, then in effect, set forth the basic authority for separation of enlisted personnel for unfitness. The regulation stated that individuals would be discharged by reason of unfitness with an undesirable discharge, unless the particular circumstances in a given case warranted a general or honorable discharge, when it had been determined that an individual's military record was characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities; (b) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault upon a child, or other indecent acts or offenses; (c) drug addiction or the unauthorized use or possession of habit-forming narcotic drugs or marijuana; (d) an established pattern for shirking; or (e) an established pattern showing dishonorable failure to pay just debts.

21. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board noted the applicant's contentions that his discharge was the result of a single incident involving disrespectful language toward a superior while he was on medical restriction near the holidays in 1964.

2. The Board acknowledged the applicant's two years of active service and his permanent physical profile for internal derangement of the left knee, which was documented during his service. The Board found the applicant's record reflects multiple instances of misconduct including five nonjudicial punishments and a special court-martial, the Board found the circumstances surrounding his medical condition, the timing of the disciplinary actions, and the applicant's credible personal account warrant consideration for clemency. The applicant's record does not support an upgrade to honorable, as the pattern of misconduct and disciplinary history remain significant. However, in the absence of serious criminal offenses, and the passage of time, the Board determined that an upgrade to a general, under honorable conditions discharge is warranted. Therefore, the Board granted partial relief with an upgrade the applicant's discharge to general, under honorable conditions

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 showing his characterization of service as General Under Honorable Conditions.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrade of the applicant's under other than honorable conditions discharge to honorable.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

3. AR 635-208 (Personnel Separations-Discharge-Unfitness and Unsuitability), then in effect, set forth the basic authority for separation of enlisted personnel for unfitness. The regulation stated that individuals would be discharged by reason of unfitness with an undesirable discharge, unless the particular circumstances in a given case warranted a general or honorable discharge, when it had been determined that an individual's military record was characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities; (b) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault upon a child, or other indecent acts or offenses; (c) drug addiction or the unauthorized use or possession of habit-forming narcotic drugs or marijuana; (d) an established pattern for shirking; or (e) an established pattern showing dishonorable failure to pay just debts.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//